

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Ref.: AL OTH 130/2022
(Please use this reference in your reply)

5 January 2023

Dear Mr. Lukenda,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 43/16, 44/15, 46/7 and 43/4.

We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received.¹ Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including businesses) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to your attention to the information we have received concerning the activities of the Belgian-based company Green Invest and its subsidiary BUK d.o.o, based in Istočno Sarajevo, Bosnia and Herzegovina (BiH). In particular, the filing of three defamation lawsuits against two young Bosnian activists, Ms. **Sara Tuševljak** and Ms. **Sunčica Kovačević**

Ms. **Sara Tuševljak** and Ms. **Sunčica Kovačević** are two law students, aged 25, who formed a group of activists and local community members organizing peaceful protests, press conferences and other initiatives against the construction of small hydropower plants in the Kasindolska river, in East Sarajevo. They run an informal civil society initiative “[Stop the construction of mini hydropower plants on the Kasindolska river](#)” to inform about and debate the impacts of such energy projects, and have established cooperation with other organizations to advance legal

¹ Further information about the communication procedure is available at: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>

BUK d.o.o.

action tackling the issue.

Since 2017, they have been publicly speaking out about the environmental impacts of the small hydropower plants operated by your company, BUK d.o.o, in the Kasindolska river. BUK d.o.o is a company with headquarters in Istočno, Sarajevo, and is a subsidiary of Belgian-based company Green Invest.

The women human rights defenders have been questioning the concessions and environmental permits granted to your company, BUK d.o.o, to carry out the hydropower plants projects of "Podivič", "Slapi" and "Samar", mainly due to alleged lack of consultation with the local community about the projects and the negative consequences of the plants to the river, its surrounding ecosystem and human health.

Their advocacy also spotlights irregularities in the process of permits issuance and, in that front, have led to the filing of a lawsuit against BUK d.o.o, in which the District Court in Banja Luka revoked the permits to construct the referred plants. Despite the Court order, the company moved forward with the construction and operation of the "Podivič" hydropower, which has been publicly criticized by Ms. Sara Tuševljak and Ms. Sunčica Kovačević and other local community members. Rulings on the status of the different permits are currently before the Constitutional and Supreme Courts.

According to the information received:

Following recent advocacy activities and media appearance by Ms. Sara Tuševljak and Ms. Sunčica Kovačević, the mayors of the three affected municipalities expressed support in objecting the construction of the referred small hydropower plants projected by Green Invest/BUK d.o.o. in the Kasindolska river.

In response, Green Invest/BUK d.o.o. has filed three defamation lawsuits and threatened further legal action against Ms. Tuševljak and Ms. Kovačević, seeking damages equivalent to 7,500 EUR. The lawsuits are based on statements made by the women human rights defenders on the actual and potential environmental damage caused by the clearing of forests for access roads and as well as construction of the hydropower dams themselves. The court action puts defendants at risk of incurring in high proceeding costs in case of a negative Court ruling. On 24 October 2022, preliminary hearing against Ms. Tuševljak took place. The next court date set for 27 December 2022 at 12 p.m. Ms. Kovačević's first hearing will take place on 27 December 2022 at 2 p.m.

Without wishing to prejudge the accuracy of the allegations, we wish to express concern at the filing of defamation lawsuits against the two young activists in face of their advocacy for the protection of the Kasindolska river and its surrounding environment. We are particularly concerned that such lawsuits present the hallmarks of Strategic Lawsuits Against Public Participation (SLAPPs), hence may contribute to discourage their legitimate advocacy work and to have a chilling effect on other activists, human rights defenders and civil society organizations engaging in environmental protection in the region.

We are furthermore concerned about the risk of disproportional financial burden on the two defendants which may put pressure on their engagement in the defence of human rights and the environment. Moreover, we are concerned by the reported threatening tone of the lawsuits and believe they express the company's opinions rather than factual statements, featuring the characteristics of SLAPPs.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information concerning your company's hydropower plants project as well as the reasons for filing the defamation lawsuits against the two young activists.
3. Please explain what measures have been taken to ensure that human rights defenders can carry out their peaceful and legitimate activities without fear of judicial harassment, SLAPPs or other restrictions. In particular, please indicate how your company has incorporated the recommendations made by the Working Group on business and human rights to businesses in its 2021 guidance on ensuring respect for human rights defenders (A/HRC/47/39/Add.2).
4. Please explain whether BUK d.o.o.'s construction and operation of the "Podivič" hydropower was carried out with a valid permit.
5. Please indicate measures taken to ensure that your company complies with Bosnia and Herzegovina's as well as international environmental laws and human rights standards.
6. Please advise about the steps taken to ensure that your company respects human rights in line with the UN Guiding Principles on Business and Human Rights, including by conducting human rights due diligence to prevent, mitigate and remediate adverse impacts.
7. Please provide information on steps taken by your company to establish, or participate, in operational-level grievance mechanisms, in line with the UN Guiding Principles, to effectively address adverse human rights impacts caused by (or contributed to) your company throughout your operations.

This communication and any response received from your company will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please note that the allegations contained in this letter will also be sent to Bosnia and Herzegovina, Belgium, and Green Invest.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your company to clarify the issue/s in question.

Please accept, Mr. Lukenda, the assurances of our highest consideration.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Fernanda Hopenhaym
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

David R. Boyd
Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Annex

Reference to international human rights law

We would like to highlight to refer to article 19 of the International Covenant on civil and political rights, succeeded by Bosnia and Herzegovina on 1 September 1993, which protects the right to freedom of expression, including the freedom to access and impart information. In her report on media freedom and the safety of journalists in the digital age from June 2022, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression recommended that “States discourage frivolous or vexatious legal action (strategic lawsuits against public participation) against journalists and news outlets by adopting laws and policies that allow early dismissal of such cases, limit the damages claimed in civil defamation suits against journalists and media outlets, permit the defence of “public interest” and “no malice” for journalists, provide legal support to victims of strategic lawsuits against public participation, end “forum shopping” and sanction the use of strategic lawsuits against public participation” (para. 113).

Further, we would like to refer to the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed in 2011 by the Human Rights Council in its resolution (A/HRC/RES/17/31) after years of consultation with governments, civil society and the business community. The Guiding Principles have been established as the authoritative global standard for all States and businesses to prevent and address business-related adverse human rights impacts. These Guiding Principles are based on the recognition of:

- a) The existing obligations of States to respect, protect and fulfil human rights and fundamental freedoms;
- b) The role of business enterprises as specialised bodies or corporations performing specialised functions, which must comply with all applicable laws and respect human rights;
- c) The need for rights and obligations to be matched by appropriate and effective remedies when they are violated.

The Guiding Principles also make clear that businesses have an independent responsibility to respect human rights. Principles 11-24 and 29-31 provide guidance to business on how to meet their responsibility to respect human rights and to provide remedies where they have caused or contributed to adverse impacts. The Guiding Principles have identified two main components of the corporate responsibility to respect human rights, which require business enterprises to:

- a) Prevent their own activities from causing or contributing to adverse human rights impacts and address those impacts when they occur;
- b) Seek to prevent or mitigate adverse human rights impacts directly related to operations, products or services provided through their business relationships, even where they have not contributed to those impacts" (Guiding Principle 13).

To meet their responsibility to respect human rights, businesses should have in place policies and procedures appropriate to their size and circumstances:

- a) A political commitment to uphold their responsibility to respect human rights;
- b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their human rights impact;
- c) Processes to redress any adverse human rights impacts they have caused or contributed to (Guiding Principle 15).

In addition, the Guiding Principle 18 and 26 underline the essential role of civil society and human rights defenders in helping to identify potential adverse human rights impacts related to business. The Commentary to Principle 26 underlines how States, in order to ensure access to remedies, must ensure that the legitimate activities of human rights defenders are not obstructed. In its 2021 guidance on ensuring respect for human rights defenders (A/HRC/47/39/Add.2), the Working Group on Business and Human Rights highlighted the urgent need to address the adverse impacts of business activities on human rights defenders. It explains, for States and business, the normative and practical implications of the Guiding Principles in relation to protecting and respecting the vital work of human rights defenders.

Furthermore, business enterprises should remedy any actual adverse impact that they cause or to which they contribute. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome (commentary to Guiding Principle 25).